

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2009-026189

12/29/2009

HONORABLE BETHANY G. HICKS

CLERK OF THE COURT
M. Sahli
Deputy

360 ENTERPRISE INC

KERRY SCOTT MARTIN

v.

CLIFFSIDE MALIBU, et al.

ANDREW F HALABY

WILLIAM G KLAIN

MINUTE ENTRY

A hearing was held on Defendant Cliffside Malibu's and Richard Taite's Motion to Dismiss the Plaintiff's claim for injunctive relief, following which the Court took the matter under advisement.

In this case, the Plaintiff asserts claims for (1) breach of fiduciary duty/breach of the duty of loyalty, (2) aiding and abetting breach of fiduciary duty/duty of loyalty, (3) misappropriation of trade secrets, (4) unfair competition, (5) breach of contract, (6) breach of the covenant of good faith and fair dealing, (7) tortuous interference with contractual and prospective contractual relations, and (8) conversion arising, generally, from the fact that three of Plaintiff's former employees have allegedly competed, and are allegedly competing, with Plaintiff, possibly commencing prior to the termination of their employment by Plaintiff, at least in part based on the use of proprietary information and trade secrets, resulting in the loss by the plaintiff of at least one of its clients. The Plaintiff prays for economic damages, exemplary and punitive damages, recovery for unjust enrichment, injunctive relief of various kinds, and attorneys' fees.

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Defendants Cliffside Malibu and its president, Richard Taite, have moved to dismiss the prayer for injunctive relief on the ground that Plaintiff's Complaint, and its efforts to articulate the specific nature of the proprietary information and trade secrets involved, consist solely of conclusory jargon and buzzwords which do not identify any protectable information.

While the Court is inclined to agree that, notwithstanding multiple requests, Plaintiff has been unable to articulate any specific proprietary information or trade secrets which may have been misappropriated or converted by or for the benefit of the Defendants, nevertheless, as injunctive relief is only a possible by-product of the litigation itself, which would continue even if the request for injunctive relief is dismissed as requested, there is a possibility that the Plaintiff will be able to identify specific proprietary information or trade secrets in the course of discovery. If the Plaintiff is unable to do so, the Court would entertain a renewed motion to dismiss, at that point directed at all of the Plaintiff's claims which depend on the alleged misappropriation or conversion of proprietary information or trade secrets.

Accordingly,

IT IS ORDERED the Defendant's Motion to Dismiss is denied.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>